

(23,811)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 230.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE,
MILLER & COMPANY, APPELLANT,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COM-
PAGNIE GENERALE TRANSATLANTIQUE, AND CREDIT
HAVRAIS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

	Page
Caption	0
Transcript from the district court of the United States for the eastern district of Louisiana.....	1
Caption	1
Bill of complaint.....	2
Exhibit "A"—Statement showing date of draft, etc.....	13
"B"—Statement showing marks of cotton, etc.....	13
"C"—Statement showing date of delivery, etc.....	13
Order on bill of complaint and marshal's return, etc.....	13
Subpœna in chancery to Texas Transport & Terminal Co. and re- turn	16
Subpœna in chancery to Compagnie Generale Transatlantique and return	17
Bond of complainant on restraining order.....	19
Restraining order and marshal's return.....	21
Special and qualified appearance of Credit Havrais, defendant....	23
Demurrer of Credit Havrais to jurisdiction.....	23
Hearing and order, demurrer overruled.....	25
Answer of Credit Havrais, defendant.....	25

	Page
Hearing and order that injunction issue on complainant furnishing bond	38
Motion to release cotton on bond.....	39
Order for delivery of cotton on bond.....	40
Bond of complainant on injunction <i>pendente lite</i>	42
Injunction and marshal's return thereon.....	43
Bond for release of cotton.....	45
Replication to answer of Credit Havrais.....	47
Answer of Texas Transport & Terminal Co. et al., defendants.....	48
Amended answer of Texas Transport & Terminal Co. et al., defendants	52
Hearing in part and continuance.....	53
Note of evidence for complainant.....	54
Evidence for complainant.....	56
Note of evidence for Credit Havrais, defendant.....	57
Evidence for Credit Havrais, defendant.....	58
Resumed hearing and submission.....	59
Decree	60
Petition for appeal and order.....	60
Assignments of error.....	62
Appeal bond.....	63
Clerk's certificate.....	65
Argument and submission.....	66
Opinion of the court.....	66
Judgment	67
Petition for rehearing.....	67
Order denying rehearing.....	68
Petition for appeal and order.....	69
Assignment of errors.....	70
Bond on appeal.....	71
Clerk's certificate.....	72
Citation and service.....	72

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

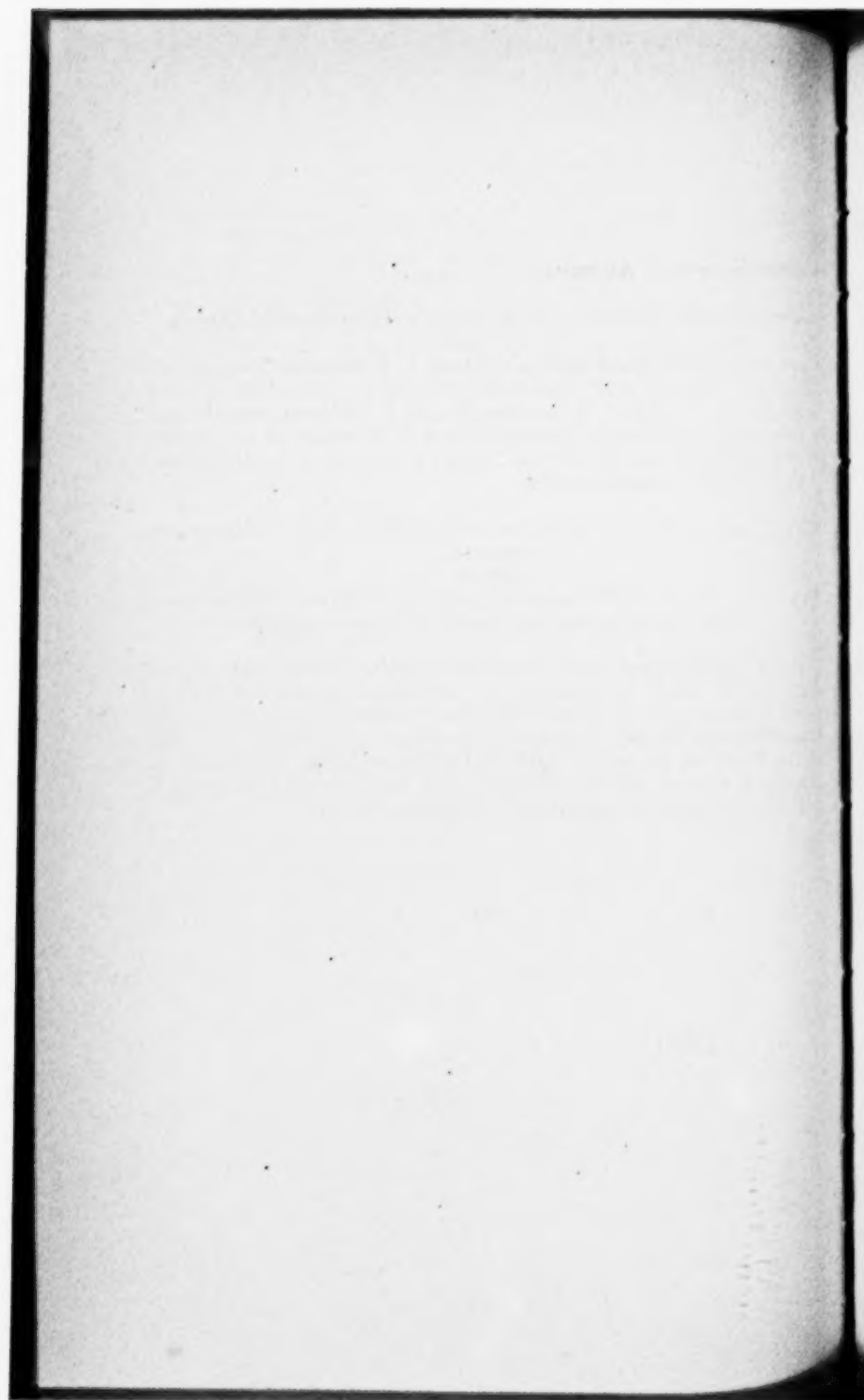
Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, Before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable William B. Sheppard, District Judge.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
Appellant,
versus

TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE
TRANSATLANTIQUE, and CREDIT HAVRAIS, Appellees.

Be it remembered, that heretofore, to-wit, on the 10th day of July, A. D. 1912, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2393, as follows:

(a)



UNITED STATES OF AMERICA.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

J. A. E. PYLE, TRUSTEE,

Appellant,

versus

No. 14,277

TEXAS TRANSPORT & TERMINAL COMPANY,

ET ALS.,

Appellants.

Messrs. W. A. Percy, J. A. Lamb, and Dufour & Dufour, for
J. A. E. Pyle, Trustee, Appellant.

Mr. George H. Terriberry, for the Texas Transport & Terminal Company, and Compagnie Generale Transatlantique, Appellees.

Messrs. Denegre & Blair, for Credit Havrais, Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division, to the United States Circuit Court of Appeals for the Fifth Circuit, Returnable Within Thirty (30) Days From the First (1st) Day of March, A. D. 1912, at the City of New Orleans, State of Louisiana.

Extension of Thirty (30) Days' Time From the Return of the Appeal, To-wit, From March 31st, 1912, Granted by

the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Extension of Thirty (30) Days' Time From the Return of the Appeal, To-wit, From April 30th, 1912, Granted by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Time for Filing the Transcript of Appeal in the Honorable United States Circuit Court of Appeals for the Fifth Circuit, Extended to the Tenth (10th) Day of July, A. D. 1912, as Per Agreements of Counsel, Copied at Pages 1332 and 1336, Respectively, of the Transcript of Appeal in the Case Bearing the Above Title, and Numbered 14,240 of the Docket of the Said United States District Court.

TRANSCRIPT OF APPEAL.

1 BILL OF COMPLAINT.

Filed January 23rd, 1911.

United States District Court, Eastern District of Louisiana,
New Orleans Division.

J. A. E. PYLE, TRUSTÉE,

versus

No. 14,277

TEXAS TRANSPORT & TERMINAL COMPANY,
ET ALS.

To the Honorable the Judge of the United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, a citizen of the State of Mississippi, suing herein as trustee in bankruptcy of Steele, Miller & Company, brings this his bill of complaint against the Compagnie Generale Transatlantique, a corporation created under the laws

of the Republic of France, with its domicile in the City of Paris, France, the Texas Transport & Terminal Company, a corporation created under the laws of the State of New Jersey, but doing business in the City of New Orleans through W. H. Hendren, agent, F. Scheuch & Company, a commercial firm composed of Ferd Scheuch and Albert Schilling, of Havre, France, and Credit Havrais, a corporation which your orator is advised is organized under the laws of France, with its domicile at Havre, France, and other persons against whom process is herein prayed; and thereupon your orator complains and says:

First. That Steele, Miller & Company, a partnership composed of L. C. Steele, J. H. Miller and C. H. G. Linde, was lately doing business in and had its principal place of business at Corinth, in the State of Mississippi, and within the Northern District of Mississippi; that the business of said firm of Steele, Miller & Company consisted of the purchasing and selling of cotton.

Second. That on May 4, 1910, in the suit No. 123, entitled "Knoop, Fabarius & Company, et al., vs. Steele, Miller & Company," in the United States District Court for the Northern District of Mississippi, application was made for an adjudication in involuntary bankruptcy against said firm and for the appointment of a temporary receiver, to take charge of the assets of said firm pending the action of the Court and pending the election of a trustee; that your orator, J. A. E.

2 Pyle, was appointed by the Honorable Judge of the United States District Court for the Northern District of Mississippi, as temporary receiver, in accordance with the prayer of said petition, and that your orator duly qualified as such, all of which will appear more fully from the petition and order filed in said cause and the oath and bond filed by your orator as temporary receiver, in the said numbered and entitled cause, all of which are made part hereof as though fully and at length set forth herein, and will be produced at the trial of this cause.

Third. That on the 31st day of May, 1910, in the trial of said cause held in the manner and form prescribed by law, the said firm of Steele, Miller & Company was adjudicated a bank-

rupt, and on the 11th day of July, 1910, at the meeting of the creditors held pursuant to law, your orator was elected trustee of the said firm of Steele, Miller & Company, all of which will appear more fully from the decree of adjudication in bankruptcy of the United States District Court for the Northern District of Mississippi, rendered on the 31st day of May, 1910, in said cause entitled "Knoop, Fabarius & Company, et al., vs. Steele, Miller & Company," No. 123 of the docket of the United States District Court for the Northern District of Mississippi, in bankruptcy, and by reference to the proceedings before the referee in bankruptcy and the order approving the bond of your orator as trustee, which said proceedings are also made part hereof as though fully and at length set forth herein and which will be produced at the trial of the cause.

Fourth. Your orator shows that on or prior to the 23rd day of April, 1910, Steele, Miller & Company were indebted to the Credit Havrais in the sum of 38,828.20 francs, which amounts to \$7,452.62 at the current rate of exchange, and that said indebtedness arose out of the following
3 transactions:

That said Steele, Miller & Company at a date to your orator unknown had adopted a fraudulent scheme of obtaining money, and in furtherance of which the said bankrupt firm did draw drafts for large sums of money and did attach to such drafts what purported to be through bills of lading of carriers for lots of cotton specifically described in such bills of lading, and thereupon the said Steele, Miller & Company received the money called for by such drafts either by their sale or their acceptance and payment by the drawees; that the said bills of lading resembled in form and appearance the bills of lading issued by carriers at places from which Steele, Miller & Company, from time to time, shipped cotton over the lines of such carriers, but the bills of lading attached to such drafts did not represent cotton actually received and shipped by the carriers, who, it was purported, issued them, but were spurious and forged bills of lading and in no sense represented cotton then in the possession of Steele, Miller & Company, or delivered to the carriers for transportation. Your orator further avers that the sale, negotiation and acceptance of drafts with actual bills of lading for the cotton

thereto attached, under the custom which involves the delivery of such bills of lading upon the payment of drafts, was and is the usual and customary method by which sales of cotton were and are accomplished by persons engaged in such trade, and the purchases of cotton were and are accomplished by the purchase or acceptance and payment of such drafts with bills of lading thereto attached; that, under the custom and practice of the cotton trade, such drafts were and are purchased or paid wholly on the security of the bills of lading thereto attached and for the purpose of obtaining the cotton therein mentioned, and the purchase or acceptance and payment of the said drafts with the said bills of lading

4 attached constituted the entire transaction between the parties, the bills of lading supposedly representing cotton which has passed into the carriers for delivery, subject to the presentation of the bill of lading, and the payment and acceptance of the draft and the acquisition of the said bill of lading passing the muniment of title to the party who had paid or accepted the said draft.

Fifth. Your orator avers that on or about the following date, to-wit, February 14, 1910, and within 90 days thereafter, the Credit Havrais had become the acceptor of a draft drawn by Steele, Miller & Company in the sum of 38,828.20 francs, which said draft, at the rate of exchange then current, amounted to \$7,452.62, to which said draft was attached papers purporting to be a bill of lading of a carrier for 100 bales of cotton, and your orator annexes hereto as Exhibit "A," a statement showing the date of said draft, the name of the drawee, viz., the Credit Havrais, the time when the draft was payable, the marks of the cotton and the number of bales thereof, for which papers purporting to be bills of lading were attached to such draft, and the amount of such draft in francs, in which form of currency the draft was drawn, and your orator now avers as a matter of fact that the papers attached to the said draft were not bills of lading for which any cotton had been received or shipped by the carrier which it was purported had issued such bills of lading, as recited therein, and such papers purporting to be the bills of lading were therefore wholly spurious and of no force and effect as representing the cotton called for by them. The draft aforesaid, and appearing in the said Exhibit "A," at-

tached hereto, were accepted and paid for by or for the Credit Havrais for the purpose of obtaining and thus buying the bills of lading thereto attached, and the cotton called for by such ladings, and by such acceptance and payment your
 5 orator is advised and charges that the Credit Havrais became and was a creditor of said Steele, Miller & Company in the sum of money hereinbefore stated.

Sixth. Your orator avers that the firm of Scheuch & Company, herein made a defendant, was at the time of the transactions herein recited, a commercial firm engaged in buying and selling cotton in Havre, France; that the said firm would and did purchase from Steele, Miller & Company certain cotton, and in accordance with the customs of the trade, did open banker's credit against which Steele, Miller & Company would draw its drafts to which were attached the bills of lading, presumably bearing the marks of the cotton shipped and to which were further attached what is known in the trade as "all necessary documents;" that in the transactions herein complained of, the cotton referred to in the bills of lading and in the drafts hereinbefore described was sold to Scheuch & Company, drafts to be made upon the Credit Havrais, papers attached to said draft to the order of Steele, Miller & Company notify Scheuch & Company.

Your orator further avers that for a long time previous to the first day of April, 1910, and at all times since that date, Steele, Miller & Company were wholly insolvent; that they had issued and negotiated drafts with spurious bills of lading attached in the manner hereinabove described, which had been purchased and paid for by persons in various parts of the world in an amount of money approximating three million dollars (\$3,000,000) or more.

Seventh. Your orator shows that on or about the 6th day of April, 1910, the said Steele, Miller & Company had in its possession or under its control at Macon, Mississippi, 100 bales of cotton marked as follows:

6

S R U I

that said cotton on or about said date was shipped by said Steele, Miller & Company to the City of New Orleans, way-

bills or bills of lading being issued in favor of J. D. Hardin & Company, of this city, and your orator annexes hereto as Exhibit "B" a statement showing the marks of said cotton, the number of bales of each mark, the date of delivery and issuance of the bills of lading of way-bills by the carrier, and the destination of said cotton. Your orator avers that the said cotton reached the City of New Orleans on or about the 23rd day of April, 1910, and that thereupon the said cotton was claimed by J. D. Hardin, or J. D. Hardin & Company, acting as agents of Steele, Miller & Company, and said cotton was delivered to the Compagnie Generale Transatlantique, through its agent, the Texas Transport & Terminal Company, and port bills of lading issued therefor, which said bills of lading were returned by the said Hardin to Steele, Miller & Company, at Corinth, Mississippi, or delivered in person to a member of said firm or an agent of said firm. Your orator annexes hereto as Exhibit "C" a statement showing the date that said cotton was delivered to the Texas Transport & Terminal Company as agents of the Compagnie Generale Transatlantique, the number and date of the bill of lading, the marks and number of bales of each mark of the said cotton so delivered.

Eighth. Your orator avers that on or about the 14th day of February, 1910, and continuously thereafter, the said Credit Havrais and Scheuch & Company, or both of them, were ordinary unsecured creditors in the sum of 38,828.20 francs, or \$7,452.62, represented by the drafts herein described and to which was attached the spurious and forged bills of lading: that on or about said date the said Steele, Miller & Company, being then insolvent, with intent to prefer said Credit Havrais or Scheuch & Company, or both of them, over their other creditors, did deposit in the United States mail the said port bills of lading, the said bills of lading being addressed to Scheuch & Company, and the same having been indorsed by Steele, Miller & Company, the object and purpose of forwarding said port bills of lading being to substitute the same for the forged and worthless bill or bills of lading attached to the draft held by the said Credit Havrais or Scheuch & Company, or both of them, and the said port bills of lading in due course were received by Scheuch & Company and delivered to the Credit

Havrais, but your orator now charges that the said bills were received by Scheuch & Company and delivered to the Credit Havrais, at a time subsequent to the adjudication in bankruptcy, and at a time when it was publicly known that Steele, Miller & Company were insolvent; and your orator is advised that the Credit Havrais thereupon surrendered its spurious and forged bills of lading to Scheuch & Company, who is now holding them, or by arrangement between said Scheuch & Company and the said Credit Havrais, said spurious bills of lading are being held by the said Credit Havrais for account of said parties. Your orator avers that the transmission of said port bills of lading to be substituted for the said fraudulent bills of lading was done with the intent to prefer the said Credit Havrais, and that when the said bills of lading were mailed to the said Scheuch & Company for delivery to the Credit Havrais, and were received by the said Scheuch & Company and delivered to the said Credit Havrais, in accepting the said bills of lading and permitting the substitution of the said valid and port or custody bills of lading for the worthless bills of lading then held, knew or should have known and had reasonable cause to believe that a preference

8 was thereby given and intended and knew, or should have known, that Steele, Miller & Company was at said time insolvent, and that the effect of the mailing, the receipt and acceptance and substitution of said bills of lading was to enable the said Scheuch & Company or said Credit Havrais to obtain payment of its said draft, and that said act of Steele, Miller & Company, in forwarding the said bills of lading to their said agents, Scheuch & Company, for delivery to the said Credit Havrais, was intended and was in fact a preference, and the acceptance of said bills of lading by the said Credit Havrais at a time when the said Credit Havrais knew, or should have known, that Steele, Miller & Company were insolvent, and when the Credit Havrais knew or should have known that gross frauds had been perpetrated by Steele, Miller & Company through forged bills of lading, and that the bills of lading held by them and attached to the draft hereinabove referred to were forgeries, was a preference within the meaning and intendment of the Bankrupt Statute. And your orator now charges that the effect of the act hereinabove described, if maintained and permitted by this Honorable Court, will be to enable the said Credit Havrais or

Scheuch & Company, or both of them, to obtain a greater per cent of their said debt than any other creditor of said bankrupt, and that such acts should be set aside.

Your orator charges that the acts hereinabove complained of were performed within four months prior to the filing of the petition of involuntary bankruptcy herein, and your orator is advised that the act or acts complained of are voidable at his election, and he does now elect to avoid the same and files this his bill to avoid said transfer.

Your orator avers that at the time of the institution of the proceedings in bankruptcy, and for a year previous to the time the said firm of Steele, Miller & Company and the individual members of said firm were insolvent within the meaning and intent of the Bankrupt Laws of the United States, and that said Steele, Miller & Company, and the individual members of said firm, are so insolvent, and that they have not surrendered assets of sufficient value to pay the creditors of said estate, and that the amount surrendered by said bankrupts, including any amount that might be recovered by litigation, and the estates of the individual members, when added to the firm assets, will not be sufficient to discharge the debts and obligations of said Steele, Miller & Company, but will only pay a small proportion of said obligations.

Ninth. Your orator avers that, at the time of the filing of the petition in involuntary bankruptcy herein referred to, 2494 bales of said cotton were about to be shipped on the steamship "Texas" to Havre, France, and that the said 2494 bales of cotton were actually loaded upon the said steamship; that 500 bales of said cotton were in the custody of the New Orleans Terminal Company at Port Chalmette; that, to-wit, on the 7th day of May, 1910, your orator, as receiver in bankruptcy of said estate, filed his petition for injunction against the removal of said cotton in the United States District Court for the Eastern District of Louisiana, and thereupon the Honorable District Court granted a restraining order, and subsequently on the 9th day of May, 1910, said Court issued an injunction pendente lite, enjoining, restraining and prohibiting the master, owner and agent of the steamship "Texas" from removing from the jurisdiction of this Court the cotton referred to in said proceedings, and on the 31st day of May,

1910, issued its injunction against the New Orleans Terminal Company to the same effect, all of which will appear more fully by the record of said proceedings entitled "J. A. E. Pyle, Receiver, vs. Philip Landgren, Master SS. "Texas," et al., No. 14,219 of the docket of the United States District Court for the Eastern District of Louisiana, which said record is made part hereof as though fully and at length set forth herein.

Your orator avers that upon the issuance of said injunction the Texas Transport & Terminal Company, the agent of the Compagnie Generale Transatlantique, the owners of said SS. "Texas," acting by and with the consent of the master and owner of said vessel, caused the cotton, the removal of which had been enjoined, to be discharged from said ship and stored in the Kentucky Press in this city, to remain there until the further orders of said Court, all in accordance with the decree rendered in the above numbered and entitled cause; and your orator avers that the said cotton is now in the said Kentucky Press awaiting the determination of this suit.

Your orator avers that the cotton hereinabove described was and is part of and included in the cotton in the custody of the Texas Transport & Terminal Company, agent of the Compagnie Generale Transatlantique, owner of the SS. "Texas," and now stored in the Kentucky Press, awaiting the determination of this suit.

Tenth. Your orator further avers that the Texas Transport & Terminal Company, W. H. Hendren, its agent, and the Compagnie Generale Transatlantique, decline to deliver said cotton, or any part thereof, to complainant, or to any part thereof, to complainant or to any other person until it has been adjudged who is the owner of this cotton and to whom the possession thereof should be delivered by it.

Eleventh. Your orator avers that, although the Texas Transport & Terminal Company holds itself out as the duly accredited agent of the Compagnie Generale Transatlantique and does and performs acts for and in behalf of said Compagnie Generale Transatlantique, your orator is informed that said Compagnie Generale Transatlantique has never designated the said Texas Transport & Terminal Company as its agent for the service of pro-

cess in this State, as required by the laws of this State, and that process should issue herein against the said *Compagnie Generale Transatlantique*, through John T. Michel, Secretary of State of the State of Louisiana, in accordance with the laws of Louisiana upon the subject-matter.

Twelfth. Your orator further shows that the said Scheuch & Company and the individual members of said firm and the Credit Havrais are not residents of the Eastern District of Louisiana, but are aliens. That neither said Scheuch & Company nor the individual members of said firm, nor the Credit Havrais, or any of its agents or officers, are at present within the Eastern District of Louisiana, or in the United States, and neither the said Scheuch & Company nor the individual members of said firm, nor the Credit Havrais, are represented by anyone authorized to accept or receive service of process, and that service by publication in the manner and form provided in such cases is necessary in the premises.

Thirteenth. Your orator submits himself to the jurisdiction of this Court, and offers to do equity, and to perform, such terms and conditions as may be imposed by the Court upon granting of the relief hereinafter prayed for.

The premises considered, your orator prays that this Court will take jurisdiction of this his bill; that the *Compagnie Generale Transatlantique* and the Texas Transport & Terminal Company be made parties respondent hereto, and that by appropriate process and orders they be severally required to answer this bill, but not under oath, answer under oath being hereby expressly waived; that this Court's writ of subpoena issue to the said *Compagnie General Transatlantique* and the

12 Texas Transport & Terminal Company, commanding them to answer this bill according to the rule of this Court, but not under oath (answer under oath being hereby expressly waived); that service upon the *Compagnie Generale Transatlantique* be made upon John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana; that by appropriate orders and process Scheuch & Company and the Credit Havrais be required to appear in this cause and plead or demur to and answer this bill, but not under oath (answer under oath being expressly waived); that

And if your orator is mistaken in the relief prayed for, then he prays for such other, further and general relief as in equity and good conscience he may be entitled to.

(Signed) DUFOR & DUFOR.

(Signed) W. A. PERCY.

13 State of Louisiana,
 Parish of Orleans,
 City of New Orleans.

William C. Dufour, being duly sworn, deposes and says:

That he is a member of the firm of Dufour & Dufour, attorneys at law in the City of New Orleans; that he is one of the attorneys for J. A. E. Pyle, trustee; the said J. A. E. Pyle, trustee, is a resident of the State of Mississippi, and is not now in the State of Louisiana, and is not otherwise represented, and that the allegations contained in the foregoing petitions are true and correct to the best of his knowledge and belief, so help him God.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 23 day of January, 1911.

[Seal] (Signed) FRANK H. MORTIMER,
U. S. Commr.

14

EXHIBIT "A."

Statement of Credit Havrais, Havre, France.

Date, 2/14/10; draft No., 2214; marks, S. R. U. I.; No. bales, 100; amount, 38,828.20; pretended origin of shipment, Columbus, Miss. Which amount, at 5.21, amounts to \$7,452.62.

15

EXHIBIT "B."

Statement of Cotton Shipped by Steele, Miller & Company to J. D. Hardin, Jr. & Co., of New Orleans, Showing the Origin and Marks of Cotton as Follows:

Date, 4/6/10; way bill, Macon; railroad, M. & O.; shipped to order, S/O—N. O.; marks, S. R. U. I.; No bales, 100.

16

EXHIBIT "C."

Shipment of Cotton Delivered by J. D. Hardin, Jr., & Company to Texas Transport & Terminal Company, Agents for the Str. Texas, Showing Marks and Date of Custody B/L.

Date of delivery, 4/23/10; custody; marks, S. R. U. I.; No. of bales, 100.

17

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport & Terminal Company, et als.

Considering the allegations of this bill and the allegations in support thereof,

It is now ordered, That this bill be filed and process issued as prayed for.

It appearing to the Court that there is danger of irreparable injury to complainant, unless the acts sought to be enjoined herein are restrained until the hearing of a motion for injunction in this case, it is ordered:

(1) That the defendants, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and the individual members thereof, and each of their servants, agents and employees, be and they are hereby restrained and enjoined until the further order of the Court herein from removing from the jurisdiction of this Court the 100 bales of cotton described in the bill filed in this cause, leave being given to the said Texas Transport & Terminal Company and the Compagnie General Transatlantique, or any other party in interest, to apply, after five days notice, to complainant's counsel for permission to bond said cotton.

(2) That the defendants, the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and each of them, show cause before this Court in the United States courtroom at the City of New Orleans, at eleven o'clock a. m., on the second Monday in March, to-wit, Monday, the thirteenth day of March, 1911, why an injunction pendente lite as prayed for in the said bill should not be issued.

18 3. That this restraining order shall be in force and effect from the date hereof until the hearing of complainant's motion for an interlocutory injunction herein, provided that complainant furnish bond within ten days from the date of this order in the sum of \$500.00 payable to defendant with surety approved by the Clerk of this Court and conditioned substantially as hereinafter mentioned. The condition of said bond shall be substantially as follows:

Whereas, a restraining order has been made in the above numbered and entitled cause by the terms of which the defendants, and each of them, and each of their agents and employees, are restrained until an application for an interlocutory injunction herein is determined from doing or causing to be done certain acts.

Now, therefore, if the above mentioned J. A. E. Pyle, trus-

tee, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

It further appearing to the Court that said defendants Scheuch & Company and Fred Scheuch and Albert Schilling, the individual members of said firm, and the Credit Havrais, are not inhabitants of the Eastern District of Louisiana, upon whom service of process can be made,

It is ordered, That the defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, individual members of said firm, and Credit Havrais, shall appear, plead, answer or demur by the second Monday in March, to-wit, Monday, the thirteenth day of March, 1911; that a copy of this order be served upon said defendants wherever found, and if such personal service is not practicable, that said defendants be notified of this order so directing them to appear, plead, answer or demur by the second Monday of March, to-wit, Monday, March 13th, 1911, by publication thereof in a daily newspaper in the City of New Orleans, Louisiana, not less than once a week for six consecutive weeks.

(Signed) RUFUS E. FOSTER, Judge.

January 23, 1911.

20 MARSHAL'S RETURN ON COPY OF
ORDER ON BILL OF COMPLAINT.

Filed January 30th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport & Terminal Company, et als.

Received by U. S. Marshal, New Orleans, La., Jan. 24/11.
And on Jan. 26/11, I served copy hereof on the Texas

Transport and Terminal Co., et al., by handing same to W. H. Hendren, local manager, in person in New Orleans, La.

VICTOR LOISEL,

U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

And on Jan. 27/11 I served copy hereof on the Compagnie Generale Transatlantique by handing the same to Eugene McGivney, Ass't Sec. of State, in Baton Rouge, La.

VICTOR LOISEL,

U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

21

SUBPOENA IN CHANCERY.

Issued Jan. 23rd, 1911.

United States of America.

The President of the United States,

To the Marshal of the Eastern District of Louisiana—
Greeting:

You are hereby commanded to summon the Texas Transport & Terminal Company to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of March, 1911, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant, and said the Compagnie General Transatlantique, Texas Transport & Terminal Company, F. Scheuch & Company, and Credit Havrais are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 23rd day of January, in the year of our Lord one thousand nine hundred and eleven, and 135th year of American independence.

[Seal of Court]

(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of March, 1911, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

22 [Indorsed on back:] No. 14277. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport and Terminal Co., et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed January 26th, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 24/11.

And on Jan. 26/11, I served the original writ of which this is a true copy on the Texas Transport and Terminal Co. et als. by handing the same to W. H. Hendren, local manager in New Orleans, La.

(Signed) VICTOR LOISEL,
(Signed) By B. F. QUEEN, Dy.

23 SUBPOENA IN CHANCERY.

Issued January 23rd, 1911.

United States of America.

The President of the United States,

To the Marshal of the Eastern District of Louisiana—
Greeting:

You are hereby commanded to summon the Compagnie Generale Transatlantique, through John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana,

to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of March, 1911, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant and said the Compagnie Generale Transatlantique, Texas Transport & Terminal Company, F. Scheuch, and Credit Havrais are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 23rd day of January, in the year of our Lord one thousand nine hundred and eleven, and 135th year of American independence.

(Signed) FRANK H. MORTIMER, Clerk.

[Seal of Court.]

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of March, 1911, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

24 [Indorsed on back:] No. 14277. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport and Terminal Company et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed January 30th, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 24/11.
And on Jan. 27/11 I served the original of which this is

a certified copy on the Compagnie Generale Transatlantique, by handing the same to Eugene McGivney, Ass't Sec. of State, in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.
By B. F. QUEEN, Dy.

25 BOND FOR INJUNCTION PENDENTE
LITE.

Filed Feb. 2, 1911.

United States District Court, Eastern District of Louisiana,
New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Company et al.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company and Credit Havrais, defendant herein, for the use and benefits of defendant in the below mentioned suit, in the full and true sum of five hundred dollars (\$500.00), lawful money of the United States of America, for the payment whereof we bind ourselves our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, this 1st day of February, A. D. 1911.

Now, therefore, the condition of the above obligation is such that,

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceeding No. 14277, of the docket of the United States District Court, Eastern

District of Louisiana, in equity, entitled "J. A. E. Pyle, trustee, vs. Compagnie Generale Transatlantique, et als.," obtain a restraining order, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and each of their servants, agents and employees, until the further orders of the Court from removing from the jurisdiction of the Court the 100 bales of cotton described in the pleadings filed in this cause upon condition that the said trustee shall furnish bond.

Now, therefore, if the above mentioned J. A. E. Pyle, trustee, shall pay, or cause to be paid, all damages caused
 26 by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

(Sig) J. A. E. PYLE, Trustee.

By WM. C. DUFOUR,

Solicitor of Record.

(Sig) SOUTHWESTERN SURETY INSUR-
 ANCE CO.

By JOS. BOYLE,

[Seal]

Atty. in Fact.

Approved.

(Sig) RUFUS E. FOSTER, Judge.

27

RESTRAINING ORDER.

Issued February 2nd, 1911.

United States of America.

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport & Terminal Company et als.

The President of the United States,

To the Texas Transport & Terminal Company, and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you, and each of you, touching certain matters and things therein set forth; and, whereas, the Honorable Rufus E. Foster, the Judge of our said Court, upon due consideration thereof, has made and allowed an order in said cause, whereby you, and each of you, are required to show cause on the 13th day of March, 1911, at 11 A. M., why an injunction should not issue as prayed for in said bill of complaint. And, whereas, the said Judge has granted and allowed an order restraining you, and each of you, immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your agents, attorneys and servants, and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you and each of you absolutely refrain and desist from removing from the jurisdiction of this Court the 100 bales of cotton described in the bill filed in this cause.

And that you the said Texas Transport & Terminal Com-

pany and the said Compagnie General Transatlantique, your agents, attorneys and servants and each of you remain so inhibited and restrained until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, La., this 2nd day of February, in the year of our Lord 1911.

(Signed) FRANK H. MORTIMER, Clerk.

A true copy.

(Signed) FRANK H. MORTIMER, Clerk.

New Orleans, La., February 2nd, 1911.

[Seal]

28 [Indorsed on back:] No. 14277. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company et als. Restraining Order.

MARSHAL'S RETURNS ON RESTRAINING ORDERS.

Filed February 8th, 1911.

Received by U. S. Marshal, New Orleans, La., Feb. 2/11.

And on Feb. 3/1911, I served the original writ of which this is a certified copy on the Texas Transport and Terminal Co. by handing the same to W. H. Hendren, local manager, in person in New Orleans, La.

VICTOR LOISEL,

U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

And on Feb. 3/1911 I served the original writ of which this is a certified copy on the Compagnie Generale Transatlantique by handing the same to E. J. O'Brien, Jr., Chief Clerk, in person in Baton Rouge, La.

VICTOR LOISEL,

U. S. Marshal.

(Signed) By E. M. KINLER, Dy.

29 SPECIAL APPEARANCE OF THE CREDIT
HAVRAIS, A DEFENDANT.

Filed February 6th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. —

Texas Transport and Terminal Company, et als.

Special and Qualified Appearance of the Credit Havrais.

The Credit Havrais, made one of the defendants herein, now, through its undersigned solicitors, files this special appearance herein, reserving the right to object to the jurisdiction of this Court to grant the relief herein sought by complainant, and appearing under protest specially and solely for said purpose.

(Signed) DENEGRE & BLAIR,
Solicitors for Credit Havrais.

To the Clerk of the Said Court:

Please enter the special and qualified appearance of the Credit Havrais.

New Orleans, La., Feby. 6, 1911.

(Signed) DENEGRE & BLAIR,
Solicitors.

30 DEMURRER OF CREDIT HAVRAIS.

Filed February 7th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport and Terminal Company, et als.

Now comes the Credit Havrais, made a defendant herein, and, appearing specially under protest for the purpose of

demurring to the jurisdiction of this Court, and for no other purpose, says that the Court is without jurisdiction in this cause for the following reasons:

That it appears from the bill of complaint that this is a suit brought under Section 60, Subdivisions a and b of the Bankruptcy Act of the United States, being the Act of Congress adopted July 1, 1898, and its amendments, to set aside the alleged voidable transfer to this defendant of the certain cotton described in the bill of complaint; that it further appears from said bill that this defendant, the transferee, is not a citizen or inhabitant or resident of this State or of the United States, but is a citizen, inhabitant and resident of the Republic of France, and that it has not been personally cited or served with any process of Court in this cause; that it is not shown by the said bill that any of its co-defendants has any authority to stand in judgment for this defendant; that the bill fails to state a case within the jurisdiction of this Court to give the relief, either interlocutory or final, prayed for by complainant.

Wherefore, defendant prays that its demurrer be sustained and this cause dismissed for want of jurisdiction, with reservation of this defendant's right to recover its costs
 31 and all damages sustained from the injunctive orders heretofore rendered in this cause.

(Signed) DENEGRE & BLAIR,
 Solicitors for above named defendant, the Credit Havrais.

J. P. Blair, being duly sworn, deposes and says that he is of counsel for the said Credit Havrais, which is absent from the State and unrepresented save by its said counsel and solicitors of record; that the foregoing demurrer was not filed for purposes of delay; and affiant further states and certifies that in his opinion said demurrer is good in point of law.

(Signed) J. P. BLAIR.

Sworn to and subscribed before me this 7th day of February, 1911.

[Seal] (Signed) HENRY H. CHAFFE,
 Notary Public.

32 HEARING AND ORDER—DEMURRER OF
CREDIT HAVRAIS OVERRULED.

Extract From the Minutes.

November Term, 1910.

New Orleans, Friday, February 10th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport and Terminal Company, et als.

The demurrer filed by the Credit Havrais, made one of the defendants herein, was called:

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: Messrs. Denegre & Blair, Solicitors for Credit Havrais, Exceptor.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als, Defendants.

Whereupon, after hearing the solicitors for the respective parties, it is ordered that the said demurrer be, and it is hereby overruled.

33 ANSWER OF CREDIT HAVRAIS.

Filed February 10, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14277

Texas Transport and Terminal Company et als.

Answer of the Credit Havrais.

Now comes the Credit Havrais, made one of the defendants herein, and, not waiving but reserving the benefit of its de-

murrer heretofore filed to the jurisdiction of this Court and overruled, and not consenting to but protesting against the exercise of jurisdiction in this cause, this defendant, now and at all times saving to itself any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says:

1. It admits and avers that this defendant is and was at all times hereinafter set forth, and for some time prior thereto, a banking institution duly incorporated and existing under the laws of the Republic of France, domiciled and engaged in the banking business in the City of Havre, France, including the purchase of cotton, as well as the furnishing and advancing of funds for the purchase thereof, and taking and holding title thereto.

It says that for want of sufficient information it can neither admit nor deny the allegations contained in paragraphs "Second" and "Third" of the complaint in respect to the domicile, membership and business of the firm of Steele, Miller and Company, the institution of proceedings of involuntary bankruptcy against said firm, the adjudication of bankruptcy, the appointment of complainant as receiver and his subsequent election as trustee in bankruptcy, and it leaves complainant to his proof thereof.

3. It denies the statement contained in paragraph "Fourth" of the complaint that on or prior to April 15, 1910, the relations between Steele, Miller and Company and this defendant were those of debtor and creditor, Steele, Miller and Company being indebted to it in the sum of 38,828.20 francs or \$7,452.62 in United States currency; it avers that it extended no credit and made no loan of money to Steele, Miller and Company, and that the obligation of Steele, Miller and Company on the date above named was not to pay this defendant a sum of money but to deliver or cause to be delivered to it one hundred bales of cotton which this defendant had already paid for as will hereafter be more fully set forth.

It avers that it is not familiar with the fraudulent practices of Steele, Miller and Company and is unable to affirm or deny

the correctness of the statements in respect thereto found in paragraph "Fourth" of the complaint and leaves complainant to his proof thereof.

It admits and avers that sales and purchases of cotton are usually made and effected by the drawing and acceptance of drafts with bills of lading covering the cotton attached thereto; it avers that such drafts are accepted and paid under the belief that the title to and possession of the cotton so sold and purchased are vested in the acceptor by such acceptance and the delivery of the bill of lading.

4. It admits that the statements contained in paragraph "Fifth" of the complaint and Exhibit A thereof are substantially correct. It avers that said draft represented the purchase price of a lot of one hundred bales of cotton and an identifying description of said cotton by lot numbers and marks was set forth on the face of the draft, the same corresponding with the description in the bill of lading attached thereto. It denies that said draft was accepted and paid by it for the purpose of "buying the bill of lading thereto attached," as charged in said paragraph "Fifth," and avers that the same was accepted and paid for the purpose of buying the cotton described in the draft as well as in the bill of lading and for the purpose of obtaining the bill of lading which it believed represented the cotton and the possession of which it believed gave it the title to and full dominion over the cotton; that it believed at the time that the bill of lading was genuine and that the cotton described therein and in the draft had been actually shipped at or about the date of said draft, but that, from the information received subsequent to May 7, 1910, and chiefly as a result of the investigations made in said bankruptcy proceedings, it now believes that said bill of lading was a forgery and that Steele, Miller and Company thus fraudulently deceived this defendant into believing that at the same time that it paid for the cotton by acceptance of the draft, it was receiving symbolically title to and possession of the cotton. It denies that it thus became a creditor of Steele, Miller and Company in a sum representing the amount of said draft; it avers, on the contrary, it became entitled to demand and receive from Steele, Miller and Company, the one hundred bales of cotton which had been paid for by said draft, and Steele, Miller and

Company were legally bound to make good their default by securing, marking, forwarding and delivering to this defendant the cotton covered by said draft and purporting to be covered by said spurious bill of lading.

5. It admits that the statements contained in paragraph "Sixth" of the complaint in respect to the business of Scheuch and Company are substantially correct, except the statement that the one hundred bales of cotton referred to in the complaint were sold to Scheuch and Company. 26 It believes, and so avers, that the legal and intended effect of the transaction in respect to said cotton was a transfer of the title and of full dominion over the same to this defendant who was the party that paid the seller the purchase price; that it is not material for the purpose of this suit whether the ultimate purchaser was this defendant or Scheuch and Company, since, in any event, Steele, Miller and Company agreed and bound itself to sell and deliver the said cotton, received the price thereof, and, by subsequently shipping the cotton in question, simply carried out its aforesaid original obligations, and completely divested itself of the ownership and possession of said property.

For want of sufficient information it neither admits nor denies the statements in said paragraph "Sixth" in respect to the insolvency of Steele, Miller and Company prior to April 1st, 1910, and the issuance and negotiation by it of drafts with spurious bills of lading attached thereto to other persons in various parts of the world in an amount approximating 3,000,000 of dollars, and leaves complainant to his proof thereof. It especially denies that it knew of, or had any reasonable ground for suspecting, said insolvency or said fraudulent practices.

6. It admits that it is substantially correct, as stated in paragraph "Seventh" of the complaint, that on or prior to April 6, 1910, Steele, Miller and Company had collected or had in its possession 100 bales of cotton marked as stated in the complaint, which marks correspond with the marks of the cotton on the said draft and the bill of lading attached thereto, and the said cotton was then shipped by Steele, Miller and Company under an inland bill of lading to the order of Steele, Miller and Company, and that, when said cotton reached New

Orleans, the said bill of lading was exchanged for an ocean bill of lading dated April 23, 1910, which two bills of lading in respect to the marks of the cotton covered thereby, the dates, etc., are described with substantial correctness in Exhibits B and C of the complaint; but this defendant asks leave to refer for greater certainty to said bills of lading or proven copies thereof which may be produced on the trial. It does not know, and has no means of knowing, how long prior to April 6, 1910, Steele, Miller and Company had acquired, assembled and marked said cotton.

It avers that the acquiring, assembling and marking of said cotton as aforesaid had for its intended and legal effect to appropriate said cotton to the obligations of Steele, Miller and Company under the said original transaction with this defendant, whereby it paid for said cotton and became entitled thereto; that the further legal and intended effect of said acts of Steele, Miller and Company was to give to this defendant the same right, title and interest in and to said cotton as it would have had if said cotton had been originally shipped under the original bills of lading attached to the draft as aforesaid.

It avers that it did not know and had no reason to believe or suspect, until the fraudulent practices of Steele, Miller and Company were disclosed to it through said bankruptcy proceedings some time subsequent to May 7th, 1910, that said cotton had not been shipped contemporaneously with the drawing of said draft; and, accordingly, it avers that the subsequent acts of Steele, Miller and Company to make good its default, perform its obligations and deliver to this defendant the cotton it had paid for and was entitled to receive, were done and accomplished without its procurement or knowledge.

7. It again denies that on or about February 14, 1910, or thereafter, this defendant and Schench and Company or either of them, were ordinary unsecured creditors of Steele, Miller and Company in the sum of 38,828.20 francs or \$7,452.62 represented by the said draft with the forged bill of lading attached, and again avers that the obligation of Steele, Miller and Company was to deliver 100 bales of cotton, not to pay a certain sum of money. It admits and avers that on or about the date of its issuance Steele, Miller and Company deposited in the United States Mail said

ocean or port bill of lading, representing said 100 bales of cotton, addressed to Scheuch and Company. It avers that said bill of lading was negotiable in form, to the order of Steele, Miller and Company and by it indorsed in blank, and represented said cotton; that said bill of lading was mailed to Scheuch and Company for this defendant, and that the deposit of said bill of lading in the mail operated at once a transfer of the title to and possession of said cotton to this defendant; that the acts of Steele, Miller and Company in obtaining and forwarding said port bill of lading was in furtherance of said acts of appropriation and a performance and consummation of their original obligations in the premises. It avers that said port bill of lading was delivered into its physical possession by Scheuch and Company on May 7, 1910, and it has ever since had possession thereof as well as of the bill of lading attached to said draft.

It denies that the forwarding to it by Steele, Miller and Company of said port bill of lading was done with the intent to prefer it or Scheuch and Company or either of them, over the other creditors of Steele, Miller and Company. It denies that when said bill of lading was mailed to Scheuch and company for this defendant or when the same was received and delivered to this defendant, it knew or ought to have known or had reasonable cause to believe that a preference was thereby given and intended; or knew or had reasonable cause to believe that Steele, Miller and Company was insolvent. It denies that the performance by Steele, Miller and Company, as aforesaid, of its obligation to deliver the cotton which it had agreed to deliver and which it had been paid for constituted any preference within the meaning of the Bankruptcy Act. It denies that it constituted any voidable preference in favor of this defendant for the additional reason that it was unaware at the time of the acts of Steele, Miller and Company, now charged, to constitute a preferential transfer, and

39 because it believed and had reasonable cause to believe at the time that the cotton, the transfer of which to it is now sought to be avoided, was cotton shipped at the time of the drawing of said draft, had been fully paid for by it, belonged to it, and that it was justly and exclusively entitled thereto.

For want of sufficient information it neither affirms nor denies the statements contained in said paragraph "Eighth"

in respect to the insolvency of Steele, Miller and Company, and leaves complainant to his proof thereof. It denies that it knew or should have known at the time of the transfer to it of said cotton that Steele, Miller and Company was insolvent. It avers that even knowledge of such insolvency would not have given it reasonable cause to believe that it was being given a preference because, as it again states, it was unaware of the original default and subsequent acts done to make good the default, and because, had it known thereof, it would still reasonably have believed that it was justly entitled to the cotton it had paid for, whether Steele, Miller and Company was insolvent or not at the time of the shipment thereof.

8. It admits that the statements contained in paragraph "Ninth" of the complaint are substantially correct, but it asks leave to refer to the proceedings in said Cause No. 14,219, of Pyle vs. Philip Landgren for greater certainty as to the location of the cotton at the date of the institution of said cause and as to its subsequent disposition.

9. Further answering, this defendant says that for more than three years past Steele, Miller and Company has been engaged in the business, among other things, of selling cotton to or through Scheuch and Company, a commercial firm, which is now and was at all times hereafter set forth and for some time prior thereto, domiciled and engaged at Havre, France, in the business of buying, selling and importing cotton, that, according to the regular course of business, cotton the sale of which had been negotiated, would be shipped by Steele, Miller and Company under through bills of lading to shippers' order notify Scheuch and Company, each of which bills of lading being for one hundred bales, indorsed in blank by shippers, would be forwarded to Havre attached to a draft for the full price of the cotton covered thereby (less freight, insurance and six per cent. loss in weight) drawn by Steele, Miller and Company on some bank in Havre which had agreed to take and pay for the said cotton, the cotton being described in the draft, as well as in the bill of lading, by numbers of bales and marks, which is the customary method of describing and identifying lots of cotton intended to be sold; that said documents would be pre-

sented to the drawee bank in France by some third person for Steele, Miller and Company, and it was the intended and legal effect of the acts and doings of the parties in the premises that, on the acceptance of any such drafts (the same being sixty or ninety days drafts) title to the cotton, described as aforesaid in the drafts and in the bill of lading, should thereupon become vested in the person obligating himself by such acceptance to pay the price thereof, and the indorsed bill of lading was surrendered at the time to the acceptor of the draft as one of the means of transferring title and possession and as evidence thereof and to enable the holder to obtain possession of the cotton from the carrier on arrival at Havre. That during the period aforesaid of upwards of three years many thousands of bales of cotton were so shipped and disposed of by Steele, Miller and Company, and paid for and possession thereof secured through bills of lading and drafts as aforesaid, there being always attached to the bill of lading a certificate of insurance and an invoice showing correspondence of the amount of the draft with the price of the cotton, and in many of said transactions this defendant, the Credit Havrais, was the drawee of the draft and accepted and paid the same, and received the cotton in due course from the ocean carrier on surrender of the bill of lading.

41

That in the regular course of business which had been going on as aforesaid for a number of years, Steele, Miller and Company on February 15, 1910, drew on this defendant a certain draft dated at Corinth, Mississippi, to drawers' order and by them indorsed in blank, payable ninety days after sight, numbered 2214 for 38,828.20 francs and reciting that it was drawn against 100 bales of cotton marked S R U I 1/100.

That the above described draft was presented to this defendant at Havre for acceptance and was by it accepted on February 28, 1910, and afterwards when it became due was paid in full by this defendant; that to said draft there was attached what purported to be a through bill of lading covering the same cotton described in the draft and an invoice showing correspondence between the amount of said draft and the price to be paid for the cotton, together with an insurance certificate in the usual form, all of which documents were surrendered to this defendant on the acceptance of the draft.

That, believing and relying upon the representations con-

veyed and the obligations imposed by the drawing and forwarding of said draft, with the documents attached, and believing that said cotton had actually been shipped and that acceptance of said draft, as well as the possession and ownership of the bill of lading (obtained through such acceptance) would transfer to it the title to said cotton and the right to receive the same on its arrival, this defendant accepted said draft (which it subsequently paid) and accepted the transfer and delivery of the bill of lading, with the attached certificate of insurance and invoice, which documents are still in its possession.

That no part of said cotton has ever come into the hands of this defendant except through the constructive delivery and possession effected by its holding and ownership of the bill of lading representing the same as herein set forth; that while it was awaiting the arrival of said cotton it received by mail from Steele, Miller and Company, through Scheuch and Company, on May seventh, 1910, the bill of lading issued as aforesaid by the Compagnie Generale Transatlantique acknowledging the receipt from Steele, Miller and Company of the said lot of one hundred bales with the said identifying marks, for shipment to Havre and delivery there to shippers' order, notifying Scheuch and Company, which bill of lading was indorsed in blank by Steele, Miller and Company, forwarded at or about the date of its issuance, and has ever since been, and now is, in the possession of this defendant. That the next news this defendant received concerning the said cotton was the cable report of the aforesaid proceedings instituted on May 7th, 1910, which resulted in the injunction restraining the master of the steamship "Texas" and its aforesaid owner and agent from removing said one hundred bales and other cotton out of the jurisdiction of this Court, on the ground that the shipment of said cotton by Steele, Miller and Company constituted the giving or attempt to give a preference, or an attempt to hinder and delay their creditors in violation of the bankruptcy laws of the United States; and this defendant learned from the report of said proceedings for the first time that it was alleged or charged that the original through bill of lading attached to the draft paid by it was a forgery, and it then for the first time had reasonable cause to believe that the said one hundred bales of cotton which it had paid for as aforesaid had not been shipped

on the date it had until then believed the same to have been shipped, namely, on the date of the original through bill of lading. This defendant accordingly avers that, if it be true that said bill of lading attached to said draft was forged and

43 spurious, and if Steele, Miller and Company did not deliver the cotton described therein to the said railroad company at the date of said bill of lading, but at a subsequent date, this defendant was in entire ignorance thereof, and never knew and had no reasonable cause to believe, that it had been the victim of any such fraud until after the proceedings in this Court against Steele, Miller and Company had been instituted between May 7th and 13, 1910, and brought to its attention; that until such proceedings it rested secure in the belief that the cotton it had paid was on its way to Havre and would be delivered to it on surrender of said through bill of lading.

That subsequent investigation, in the light of the disclosures evoked by the bankruptcy proceedings of Steele, Miller and Company, has led this defendant to believe that the said one hundred bales of cotton were not delivered to the said railroad company at the date of said through bill of lading; and it avers that Steele, Miller and Company either had said cotton in its possession at the time or subsequently acquired the same for the purpose of delivering it to this defendant; and that at some time prior to April 6, 1910, Steele, Miller and Company marked said cotton to correspond with said draft and attached documents, for the purpose and with the effect of appropriating the same to said draft and the rights of this defendant in the premises; and in further appropriation of said cotton and in further performance of its obligation to deliver the same to this defendant from whom it had received full payment therefor, Steele, Miller and Company, as this defendant is informed and believes, delivered said one hundred bales of cotton so marked to the said railroad company for transportation to the port of New Orleans, and thence by steamship of the "French Line" for transportation to Havre and delivery to this defendant.

That said cotton reached the Port of New Orleans prior to April 25, 1910; that Steele, Miller and Company then acting through its local agents or representatives, delivered

44 up the railroad bill of lading under which the cotton had been brought to New Orleans and received in

exchange therefor the said bill of lading issued by the Compagnie Generale Transatlantique as aforesaid and transmitted the same to this defendant; that the actual and intended effect of the aforesaid acts and doings of Steele, Miller and Company was to deliver to this defendant the said one hundred bales of cotton, to the delivery of which it was entitled and the purchase price of which it had fully paid, as long ago as February, 1910.

That the fact that the said original through bill of lading was forged or spurious did not destroy, or essentially alter the nature of, the rights and obligations of the parties; that Steele, Miller and Company became bound, if they did not have the cotton, to acquire the same and deliver it to this defendant, and this defendant became entitled to said cotton as soon as acquired and appropriated to the obligation arising out of the aforesaid transactions; that accordingly this defendant became entitled to said 100 bales of cotton as soon as Steele, Miller and Company made a definite and specific appropriation thereof in fulfillment of their aforesaid obligation, which was done as soon as that firm selected said one hundred bales of cotton and marked the same to correspond with the said first railroad bill of lading and the draft to which it was attached, and certainly was such appropriation effected when it subsequently delivered said cotton so marked to the carrier for transportation to New Orleans and thence to Havre, for the purpose of being delivered to this defendant, by whom the cotton had already been fully paid for as aforesaid; and the delivery and transfer of said cotton to this defendant was consummated and perfected by the delivery of the same to the ocean carrier and the forwarding of said ocean bill of lading therefor to this defendant.

That, prior to the institution of said cause No. 45 14,219 and prior to any bankruptcy proceedings anywhere against Steele, Miller and Company, said firm had received payment in full for said cotton and had completely divested itself of the title, ownership and possession of said cotton, and the same had been completely vested, as aforesaid, in this defendant; that at the time when this defendant acquired its right or title to said cotton it did not know and had no reasonable ground for believing that a preference was being given or intended by the transfer to it of such right and

title, that accordingly its right and title to said cotton is superior to that of the complainant trustee.

10. It avers that it has fully set forth the facts constituting the transactions between it and Steele, Miller and Company, and that it has a right to ask this Honorable Court, as it now does, to define, recognize and enforce its rights in, to or in respect to said cotton; that whether it has the full and complete title thereto, as it is advised and so claims, or whether it has a qualified ownership or special property therein, or an equitable lien or charge or a right in the nature of a pledge, its rights or title to said cotton were not created by any voidable or preferential transfer, are superior to any rights or title of complainant and entitle it to be awarded said cotton or its proceeds and to a dissolution of the injunctive and restraining orders heretofore issued in this cause, as well as in said cause No. 14,219.

11. It avers that by the procuring or issuing of said alleged spurious through railroad bill of lading for said cotton and forwarding the same to it with said draft attached and accepting the proceeds of said draft, Steele, Miller and Company warranted its title to said cotton and that the same had been delivered to the carrier for this defendant and is estopped to deny the same and is estopped to deny this defendant's right and title to the cotton after the same was selected, marked and appropriated as aforesaid, and this estoppel operates equally against the complainant trustee and the general creditors of Steele, Miller and Company and all other persons who are disputing this defendant's rights to said cotton.

12. This defendant respectfully submits that the restraining and injunctive orders issued in said cause No. 14,219 and in this cause were improvidently ordered; that this Court is and was without jurisdiction to render the same or to give complainant the relief he seeks; that at the time of the institution of said cause No. 14,219 and of the present suit, the bankrupts, Steele, Miller and Company, had parted with both the ownership and the possession of the said one hundred bales; that neither the receiver nor the trustee in bankruptcy has or had any right to proceed in rem against said property;

that his only remedy was and is a personal suit against the creditors alleged to have received the prohibited preference, and this Court has not and never had, any jurisdiction in personam over this defendant; that the appearance which this defendant has been compelled to make under protest to protect its property as aforesaid should not be construed and cannot be construed as a voluntary appearance giving this Court full jurisdiction over it.

This defendant further submits that should this Court maintain its jurisdiction to decide upon the merits the issues presented herein, then this defendant is entitled to be awarded the said cotton or its proceeds.

This defendant specially reserves all its rights and claims against the owners and agents of the steamship "Texas," and against said vessel, which it may have in the premises, and especially as the holder and owner of the said port or custody bill of lading.

Wherefore, this defendant prays that said bill of complaint be dismissed for want of jurisdiction in this Court to grant the relief prayed for, the restraining orders and injunction heretofore issued being dissolved, and a reference ordered to ascertain the damages this defendant has sustained by
 47 reason of said injunctive orders and its right to recover the same reserved.

And in the alternative, if its objections to the jurisdiction be overruled, this defendant prays that complainant's demands be rejected and that this defendant be decreed to be entitled to the within described one hundred bales of cotton and that the same be ordered to be delivered to it, or be permitted to be transported by a steamship of the said Compagnie Generale Transatlantique to Havre under and in accordance with the said bill of lading issued by said company. And, likewise in the alternative, this defendant prays that if this Court rejects its claim to the ownership and possession of said cotton then that the Court will recognize and enforce such special property or equitable lien or charge or other right in or to said cotton or its proceeds to which this defendant is entitled in the premises and which to the Court shall seem meet and just, and for such other and general relief as may be just and equitable.

(Signed) DENEGRE & BLAIR,
 Solicitors for Defendant, the Credit Havrais.

48 HEARING AND ORDER THAT INJUNCTION
 ISSUE ON COMPLAINANT FURNISHING
 BOND.

Extract From the Minutes, November Term, 1910.

New Orleans, Friday, February 10th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs.

No. 14,277.

Texas Transport and Terminal Company, et als.

The application of complainant for an injunction pendente lite herein, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Credit Havrais, Defendant.

Whereupon, after hearing the solicitors for the respective parties, it is ordered that an injunction pendente lite issue herein as prayed for upon complainant, J. A. E. Pyle, trustee, furnishing additional bond, with good and sufficient surety to be approved by the Court, in the sum of five hundred dollars (\$500.00), payable to defendants, and conditioned to satisfy any damages suffered by any of them by reason of the issuance of said injunction.

49 RULE TO RELEASE COTTON ON BOND, ETC.

Filed February 10th, 1911.

United States District Court, Eastern District of Louisiana,
New Orleans Division.

J. A. E. Pyle, Trustee,

vs.

No. 14,277.

Texas Transport and Terminal Company, et als.

On motion of Denegre and Blair, solicitors for the Credit Havrais, a defendant herein, still appearing as heretofore under protest and reserving the benefit of its demurrer to the jurisdiction of this Court, and, on suggesting to the Court that the said defendant desires to release the cotton referred to in the complainant's bill from the operation of the injunctive orders herein rendered by substituting a bond therefor so that said cotton may be free from any claims of any of the parties to this cause and from any costs or charges growing out of this cause, it is ordered that the complainant and defendants, the Texas Transport and Terminal Company and the Compagnie General Transatlantique, show cause on Friday, February 10, 1911, at 11 A. M., why said cotton should not be released and delivered to said defendant or the Compagnie Generale Transatlantique for transportation to Havre and delivery to this defendant or the holder of the bills of lading of said Compagnie Generale Transatlantique issued therefor free from all claims of the parties hereto whether for the cotton or for any costs, expenses or damages incurred or sustained in consequence of this litigation, on this defendant furnishing a bond in favor of complainant, with surety approved by the Court, for the value of said cotton, conditioned upon this defendant producing the said cotton or so much thereof as this Court in this cause may decree the said trustee complainant to be entitled to or paying to said trustee complainant the value of

50 said cotton or of the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond; the bond to take the place of the cotton and the giving of the bond to be otherwise without preju-

dice to the status, rights or obligations of any of the parties to this cause.

Service accepted.

(Signed) DUFOUR & DUFOUR,
Sols. for Trustee.
(Signed) GEO. H. TERRIBERRY.

51 ORDER FOR DELIVERY OF COTTON ON
BOND.

Filed February 10th, 1911.

United States District Court, Eastern District of Louisiana,
New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277:
Texas Transport and Terminal Company, et als.

The rule taken by the Credit Havrais, a defendant herein, for leave to release the cotton referred to in complainant's bill from the operation of the injunctive orders herein entered by substituting a bond therefor came on this day to be heard and was argued by counsel, the plaintiff in rule, the Credit Havrais, being represented by Denegre & Blair, its solicitors of record, the complainant, J. A. E. Pyle, trustee, by Dufour and Dufour, his solicitors of record, and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, by George H. Terriberry, their solicitor of record; and the Court being fully advised in the premises, it is ordered that the one hundred bales of cotton referred to in the complaint herein and hereafter more particularly described shall be released from the operation of the injunction or restraining orders herein issued or heretofore issued by this Court on the said Credit Havrais furnishing a bond in favor of the complainant trustee, with surety approved by the Court, for the value of said cotton conditioned upon the Credit Havrais producing the said cotton or so much thereof as this Court in this cause may decree the said complainant trustee to be entitled to or paying to said complainant trustee the value

of said cotton or the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond, the cotton covered by this order being numbered and marked as follows:

52

S R U I 1/100.

It is further ordered that on said bond being furnished the cotton shall be released and discharged from all claims of any party to this cause and especially from all claims for any costs, expenses or damages growing out of this litigation or any injunctive orders of this Court, the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the status, rights and obligations of any of the parties to this cause.

It is further ordered that the aggregate value of said one hundred bales of cotton is hereby fixed at seventy-four hundred and thirty-seven and 50/100 dollars (\$7,437.50), all parties consenting to said valuation, and the amount of the bond herein authorized is fixed at said sum of \$7,437.50. It is further ordered that when the bond herein provided for shall have been furnished, the cotton so released shall be free from all costs, charges and expenses, including expenses of insurance, drayage and storage, and said expense of insurance, drayage and storage if not previously paid by the trustee as herein provided, shall be taxed as costs in this suit and shall be recoverable under the bonds heretofore given by the trustee. It is further ordered that the trustee forthwith apply to the Honorable H. C. Niles, United States Judge for the Northern District of Mississippi, for authority to pay the Compagnie Generale Transatlantique the said storage charges and insurance premiums which the Compagnie Generale Transatlantique has either paid out or become liable for in preserving the said cotton, and when said trustee is so authorized, he shall have the right to apply to the Court for a proportionate reduction of the several bonds heretofore furnished by him to the extent of said cash payment.

It is further ordered that on defendant, the Credit Havrais, filing with the clerk of this Court a bond of the character and amount above provided for, and which has been approved by this Court or a Judge thereof, all injunc-

53

tive orders of this Court in respect to said cotton shall be released and dissolved, and the clerk of this Court is directed then to so notify the defendants, the Compagnie Generale Transatlantique and the Texas Transport and Terminal Company.

(Signed) RUFUS E. FOSTER, Judge.

O. K.

(Signed) J. P. B.

(Signed) G. H. T. Feb. 10/11.

(Signed) W. C. D.

54 BOND OF J. A. E. PYLE, TRUSTEE.

Filed February 14th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14277.

Texas Transport & Terminal Co., et als.

Know all men by these presents, that we, J. A. E. Pyle, trustee of Steele, Miller & Company, Bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company and Credit Havrais, defendant herein, for the use and benefits of defendant in the below mentioned suit, in the full and true sum of five hundred dollars (\$500.00), lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, this fourteenth day of February, A. D. 1911.

Now therefore, the condition of the above obligation is such that,

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceedings No. 14277

of the docket of the United States District Court, Eastern District of Louisiana, in Equity, entitled "J. A. E. Pyle, Trustee, vs. Compagnie Generale Transatlantique, et als.," obtain and [an] injunction pendente lite, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and each of their servants, agents and employees until the further orders of the Court from removing from the jurisdiction of the Court the 100 bales of cotton described in the pleadings filed in this cause upon condition that the said trustee shall furnish bond.

Now therefore, if the above mentioned J. A. E. Pyle, trustee, shall pay, or cause to be paid, all damages caused by the issuance of said injunction pendente lite, and the costs of this cause in connection therewith in the event that said injunction pendente lite is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

(Signed) J. A. E. PYLE,

By WM. C. DUFOUR, Counsel of Record.
SOUTHWESTERN SURETY INSURANCE
CO.,

(Signed) By JOS. BAYLE,

Atty. in Fact.

[Seal]
Approved.

(Signed) RUFUS E. FOSTER, Judge.

INJUNCTION.

Issued February 14th, 1911.

United States of America.
District Court of the United States, Eastern District of
Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14277.
Texas Transport & Terminal Company, et als.

The President of the United States of America,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you and each of you touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, your attorneys and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing from the jurisdiction of this Court the 100 bales of cotton described in the said bill filed in this cause, and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, this 14th day of February in the year of our Lord, 1911.

[Seal]

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

(Sig.) FRANK H. MORTIMER,
Clerk.

[Seal]

57 [Indorsed:] No. 14277. U. S. District Court,

Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Injunction to—

MARSHAL'S RETURN ON INJUNCTION.

Filed April 13th, 1912.

Received by U. S. marshal, New Orleans, La., Feby. 15/11, and I was instructed by counsel for plaintiff to hold this writ for further instructions. On April 13/12 not having been instructed by plaintiffs counsel, I return this writ unexecuted.

VICTOR LOISEL,

U. S. Marshal.

(Signed) By T. I. GALBRETH, Deputy.

58 RELEASE BOND OF CREDIT HAVRAIS.

Filed February 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14277.

Texas Transport & Terminal Company, et als.

Know all men by these presents, that we, the Credit Havrais, as principal obligor, and the American Surety Company of New York, as surety, are held and firmly bound, jointly and severally, unto J. A. E. Pyle, trustee in bankruptcy for Steele, Miller & Company, Bankrupts, in the sum of seven thousand, four hundred and thirty-seven dollars and fifty cents (\$7,437.50) for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Signed and sealed this 14th day of February, A. D. 1911.

The condition of this obligation is such that,

Whereas, in a certain cause now pending in the United States District Court for the Eastern District of Louisiana,

New Orleans Division, No. 14,277 of the docket of said Court and entitled, "J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als.," the said Pyle made claim to one hundred bales of cotton fully described in the pleadings in said cause, and obtained from said Court an order or injunction prohibiting the removal of said cotton from the jurisdiction of this Court, and

Whereas, On the tenth day of February, 1911, an order was rendered in said cause giving leave to the said Credit Havrais to release the said cotton from the operation of said injunction by sustaining a bond therefor.

Now, therefore, if the said United States District
59 Court in said cause shall decree that the said obligee, the trustee in bankruptcy, is entitled to said cotton or any part of it, and if the said Credit Havrais shall produce said cotton or the part thereof to which the obligee may be so decreed to be entitled, or pay to the obligee the value of said cotton, or of the part thereof to which the obligee may be so decreed to be entitled, the value to be the value at the time of the release as shown by the amount of the bond, then this obligation shall be null and void; otherwise to be of full force and effect.

CREDIT HAVRAIS,

(Signed) By J. P. BLAIR, Attorney in Fact.
AMERICAN SURETY COMPANY OF
NEW YORK,

(Signed) By J. H. FULTON,
Resident Vice-President.

Attest.

(Signed) PETER F. PESCU, [Seal]
Resident Assistant Secretary.

Approved.

(Signed) RUFUS E. FOSTER, Judge.

Approved.

(Signed) W. C. DUFOUR.

60 REPLICATION TO ANSWER OF CREDIT
HAVRAIS.

Filed March 6th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Compagnie Generale Transatlantique, et als.

The Replication of J. A. E. Pyle, Trustee Steele, Miller &
Company, to the Answer of the Credit Havrais.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiency of said answer, for replication thereunto saith:

That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct and humbly prays as in his said bill he hath already prayed.

(Signed)

W. A. PERCY,

(Signed)

DUFOUR & DUFOUR,

Solicitors.

61 ANSWER OF TEXAS TRANSPORT & TERMINAL CO. AND COMPAGNIE GENERALE TRANSATLANTIQUE AND CLAIM FOR DAMAGES.

Filed June 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport & Terminal Company, et als.

In Equity.

The Joint and Several Answers of Texas Transport and Terminal Company and of Compagnie Generale Transatlantique.

Now come Texas Transport & Terminal Company and Compagnie Generale Transatlantique, made defendants herein, and these defendants now and at all times saving to themselves any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

1. The [they] admit that the Compagnie Generale Transatlantique is a corporation created under the laws of the Republic of France, with its domicile in the City of Paris, France, and that Texas Transport & Terminal Company is a corporation organized under the laws of the State of New Jersey; that Compagnie Generale Transatlantique is a common carrier by sea and operates a line of steamers between New Orleans, in Louisiana, and Bordeaux and Havre, in France.

2. They say that, for want of sufficient information, they can neither admit nor deny the allegations contained in the second, third, fourth, fifth and sixth paragraphs of the complaint, relative to the domicile, the business, and the various transactions of Steele, Miller & Co.

3. They say that they believe that the allegations of the seventh paragraph of the complaint are substantially true.

4. For want of sufficient information, they can neither deny nor admit the allegations in the eighth paragraph of the complaint relative to the relations and transactions between Steele, Miller & Company and Scheuch & Company, or between Steele, Miller & Company and the Credit Havrais.

5. Answering the ninth paragraph of the complaint, they say that it is true that on the 7th day of May, 1910, there was on board the steamship "Texas," which said steamer belongs to defendant, Compagnie Generale Transatlantique, 2494 bales of cotton shipped by Steele, Miller & Company, to Havre, shipper's order, notify Scheuch & Company, Havre; that, in the case of J. A. E. Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14219 of the docket of the United States District Court for the Eastern District of Louisiana, these defendants were enjoined, pendente lite, from taking said cotton out of the jurisdiction of this Court. These defendants admit that they caused said cotton, at the expense of said Pyle, receiver, to be discharged from said steamer so that the steamer could proceed on her voyage as she was prepared, ready and going to do when restrained on May 7, 1910, and enjoined on May 9, 1910; they admit that they caused said cotton to be stored in the Kentucky Warehouse, at New Orleans, and they show that they caused said cotton to be insured for the benefit of whom it might concern while the said cotton was so stored.

6. They admit the truth of the allegations contained in the tenth paragraph of the complaint, relative to the refusal of these defendants to deliver said cotton to any person other than the holder of the bill's of lading covering same.

63 7. The defendant, the Compagnie Generale Transatlantique is solely and only a common carrier by sea; it has no relation with said cotton except as a common carrier; that it has, as in duty bound and as by law required, obeyed all of the orders of this Honorable Court, in the various cases of Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14,219 of the docket of this

Court, and in the cases of Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., numbered, respectively, 14,240, 14,241, 14,242, 14,243 and 14,277 of the docket of this Court; defendants show that the said injunctions remained in force and were obeyed by these defendants until they were, on the 15th day of February, 1911, notified by Frank H. Mortimer, Clerk of Court, that all injunctive orders in respect of said cotton were released and dissolved; that, thereupon, the Compagnie Generale Transatlantique carried said cotton forward by its first steamer, the Guatemala, and delivered the said cotton to the holders of its bills of lading in Havre, France, and took its said bills of lading on delivering said cotton, its bill of lading being thus accomplished and the responsibility and liability of the Compagnie Generale Transatlantique, and of its agent, the Texas Transport & Terminal Company, in respect of said cotton, being thereupon terminated.

Now, the defendant, the Compagnie Generale Transatlantique, shows that, in obeying the various orders of this Honorable Court, it sustained damages and incurred expenses, which in equity, law, and justice, the Court should require the complainant herein to pay to said defendant. That the damages so sustained by said Compagnie Generale Transatlantique as a result of the aforesaid injunctive orders of this Court, are as follows:

(1) In dead freight on said 2494 bales of cotton, which cotton was delivered to, and placed on board of, the steamship "Texas," and which said cotton was subsequently
64 discharged, the said steamer proceeding on her voyage without said cargo and without any substitute therefor, the amount of said dead freight being \$3310.53.

(2) In cost of insurance of said 2494 bales of cotton while in the Kentucky Warehouse from May 10, 1910, to March 9, 1911, paid out in cash by said Compagnie Generale Transatlantique, which amounted to the sum of \$2621.54.

(3) In cost of drage [drayage] of said cotton from steamer Texas to Kentucky Warehouse, the storage in said warehouse from May 12, 1910, to March 9, 1911, the drayage to the steamer Guatemala, and remarking the said cotton, for all of

which the said Compagnie Generale Transatlantique owes the said Kentucky Press and is bound to pay, amounting to the sum of \$2682.55.

(4) In the cost of detention of the steamer Texas at New Orleans for nine days while her cargo was being discharged and reloaded so as to comply with the injunction of May 9, 1910, the sum of \$1,667.20.

(5) The difference between the current rate of freight, that is, thirty-seven (37) cents per one hundred pounds, applying when said cotton was carried forward to destination by the steamship Guatemala, on March 16, 1911, and the bill of lading rate, that is, twenty-six (26) cents per hundred pounds, on 2094 bales weighing 1,055,761 pounds, and twenty-eight (28) cents per hundred pounds on 400 bales weighing 201,943 pounds, at which rate this defendant was, under its said contracts, obligated to carry said cotton, the said difference amounting in the aggregate on the 2494 bales to the sum of \$1343.08.

(6) The Compagnie Generale Transatlantique has had to employ an attorney-at-law for counsel throughout these matters, and, also to recover the damages aforesaid, and it prays the Court to allow it at a reasonable sum as counsel fees.

65 The defendant, the Compagnie Generale Transatlantique, shows that, in equity, justice, and law, it should have a decree in its favor and against the complainant in full of all of said damages, with legal interest from the time said damages were sustained until paid.

Wherefore, these defendants pray that the said bill of complaint be dismissed as against these defendants, and for costs; the defendant, the Compagnie Generale Transatlantique prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; these defendants further pray for all such other and general relief as they may, in equity and law, be entitled to receive and the Court competent to grant.

(Signed) GEO. H. TERRIBERRY,
Solicitor for Defendants, Texas Transport & Terminal
Company and Compagnie Generale Transatlantique.

66

AMENDED ANSWER.

Filed August 29th, 1911.

In the District Court of the United States for the Eastern
District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport & Terminal Company, et al.

In Equity.

Now comes Texas Transport & Terminal Company and Compagnie Generale Transatlantique, the defendants in the above cause, and leave of Court being first had, file the following amendment to the answer filed in this cause on the 15th day of June, A. D. 1911, to-wit:

After the conclusion of the seventh article of the answer, add the following allegations:

"The defendant, the Compagnie Generale Transatlantique, further shows that, for the damages aforesaid, it has a lien and privilege on all of the 2494 bales of cotton which were on board its said steamer Texas, but that, as a bond was furnished by the defendant herein, Credit Havrais, equal to the value of the cotton covered by bills of lading held by it, the said bond to stand in the place and stead of the said cotton, and, as it was ordered by the Court, at the suggestion of all parties hereto, that all claims against said cotton should be referred to said bond, the claim of said Compagnie Generale Transatlantique against said cotton and the lien and privileges in its favor on said cotton now holds and applies as against said bond so filed by the defendant herein, Credit Havrais, said bond standing in the place and stead of said cotton."

67

And amend the prayer of said answer so as to read
as follows:

"Wherefore, these defendants pray that the said bill of complaint be dismissed as against them, and for costs; the defendant, the Compagnie Generale Transatlantique, prays that there may be a decree in its favor and against the com-

plainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in the answer; and in the alternative, the defendant, the Compagnie Generale Transatlantique, prays that if this Court rejects its claim for damages, attorney's fees and interest against the complainant herein, then that the Court will grant and award such claim for all damages, attorney's fees and interest against said cotton, or its proceeds, or the bond aforesaid standing in lieu thereof, with full recognition of its lien and privilege on said cotton, or its proceeds or the bond which stands in lieu thereof, as this defendant may be entitled to have in the premises and which to the Court shall seem meet and just, and for such other general relief as to the Court shall seem proper.

(Signed) GEO. H. TERRIBERRY,
Sol. for Texas Transport & Terminal Co. and
Compagnie Generale Transatlantique.

Order.

Let the foregoing amended answer be filed.

(Signed) RUFUS E. FOSTER,
United States Judge.

68 HEARING IN PART AND CONTINUANCE.

Extract From the Minutes.

November Term, 1911.

New Orleans, Monday, November 20th, 1911.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport and Terminal Company, et als.

This cause came on to be heard this day upon the pleadings and proofs as specified in the notes of evidence offered in behalf of the respective parties:

Present: Messrs. Dufour & Dufour and W. A. Percy, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., and Compagnie Generale Transatlantique, Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Credit Havrais, Defendant;

and was heard in part, and continued until Tuesday, November 21st, 1911, at ten o'clock A. M., for further argument.

69 NOTE OF EVIDENCE OF COM-
PLAINANT.

United States District Court, Eastern District of Louisiana.

J. A. Pyle, Trustee,

vs.

No. 14,277

Texas Transport & Terminal Company, et als.

Solicitors for complainant offer, produce, read and file in evidence in this case the following:

Stipulation of counsel as to the use in cause Nos. 14,240, 14,241, 14,242, 14,243 and 14,277 of the evidence taken and filed in any one of said causes.

Stipulation of counsel as to testimony of W. E. Kennedy.

The testimony of Edward S. Elliott.

The testimony of W. H. Hendren, together with the exhibits attached thereto, the first of said exhibits being attached to the record herein filed and marked "Complainant-26;" the second being Exhibit "No. 11," to-wit, cables offered in connection with the testimony of W. H. Hendren.

The testimony of Bernard Dessommes, together with exhibit, to-wit, copies of the Havre Bulletin of date April 27, 1910, and April 28, 1910, the said exhibit being attached to an affidavit of Wm. C. Dufour, filed and used in connection with the proceedings for a preliminary injunction, and now made Exhibit "15."

The testimony of Henry E. Bory, together with the same

exhibit offered in connection with the testimony of Bernard Dessommes.

The testimony of John H. Fulton, A. Breton, Jeff D. Hardin, Jr., together with the statement entitled "Loading Record," furnished by the said Jeff D. Hardin, Jr., which said exhibit is marked Exhibit "No. 10."

The testimony of C. H. G. Linde, together with Exhibit "1," being a letter from Scheuch & Company of date January 20, 1910; Exhibit "2," a letter from Scheuch & Company of date April 26, 1910; Exhibit "3," a letter from
70 Scheuch & Company of date March 22, 1910; Exhibit "4," a statement from Scheuch & Company of date April 2, 1910; Exhibit "5," a letter from Scheuch & Company of date April 1, 1910; Exhibit "6," cablegram to Scheuch & Company of date April 28, 1910; Exhibit "7," statement of drafts drawn by Steele, Miller & Company on Scheuch & Company and claimed by Linde to have been taken up April 29, 1910; Exhibit "8," a statement of Scheuch & Company of date April 29, 1910.

The testimony of Charles Janvier and Thomas Holford, together with extract from the Liverpool Daily Post and Mercury of April 22, 1910, attached to the affidavit of Wm. C. Dufour used in the proceedings on the application for a preliminary injunction, the said exhibit being marked No.

The testimony of Edward S. Butler.

The testimony of Edward D. Nicholson.

All of said testimony taken before Frank H. Mortimer, special examiner, at his office in the City of New Orleans, on the 7th, 9th, 15th, 16th and 22nd days of June, 1911.

A certified copy of the proceedings in the case of S. B. & E. Cohn, et al., vs. L. C. Steele, et al., No. 157, in equity, of the Docket of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, being Exhibit "No. 14."

Certified copy of the proceedings in the matter of Knoop, Fabarius, et al. vs. Steele, Miller & Company, No. 123 in bankruptcy, in the District Court of the United States for the Eastern Division of the Northern District of Mississippi, particularly the petition for adjudication in involuntary bankruptcy, the certificate of the Clerk showing the date of the filing thereof and the orders of the Court in the premises. The appointment of J. A. E. Pyle as temporary receiver and

the bond of J. A. E. Pyle as temporary receiver. The order of reference to John W. Davis, referee in bankruptcy, the adjudication in bankruptcy by the said John W. Davis. The certificate of the said John W. Davis, referee in bankruptcy, showing the election of a trustee, the bond of said trustee, together with the certificate of the Clerk of the District Court of the United States for the Northern District of Mississippi, showing that John W. Davis was at the time of the said proceedings the referee in bankruptcy of said Court, and is now the referee of the said Court in bankruptcy; the same being Exhibit "No. 12" and Exhibit No. "13."

Exhibits 2 to 53, inclusive, attached to the deposition of Adolph Riss, the same being the drafts, through bills of lading, invoices, insurance certificates and custody bills of lading called for during the examination of Mr. Linde.

Exhibit 1 attached to the deposition of Franz Lysell, called for as above.

Exhibits 1 to 34, inclusive, attached to the depositions of Elisee Paul Dubois, called for as above.

Exhibits 9 to 13, inclusive, attached to the deposition of Emile Level, called for as above.

Exhibits 2 to 7, inclusive, attached to the deposition of Jules Castel, called for as above.

Admission concerning testimony of J. A. E. Pyle, trustee.

Stipulation of counsel entitled in all the above causes whereby all exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

72 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
 versus No. 14,277
 Texas Transport & Terminal Company, et als.

Note:—

Evidence offered and filed on behalf of complainant, and

Filed November 20th, 1911.

J. A. E. Pyle, Trustee,
vs.

No. 14,277

Texas Transport and Terminal Company, et als.

offer, produce, read and file in evidence in this cause the following depositions, exhibits and stipulations:

1. Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242, 14,243 and 14,277 of evidence taken and filed in any one of said causes.

2. The deposition of Ferdinand Scheuch, together with the following exhibits: Nos. 1, 2, 3, and 4, and 5, 12 and 13, as types of exhibits from 4 to 13. Nos. 14 and 18 as types of exhibits 14 to 18, and 18bis. Exhibits 19 to 29 inclusive. Exhibits Nos. 30 and 46 as types of 30 to 46. Exhibits Nos. 47 and 90 as types of Exhibits 47 to 90. Exhibits 91 and 659 as types of exhibits from 91 to 659. Exhibits 660 to 671 inclusive.

3. Deposition of Albert Schilling.

4. Deposition of Adolph Riss, and the following exhibits

annexed and referred to therein: Exhibits 1 to 35 inclusive. Exhibits 59 and 60. Exhibits 122 to 125 inclusive.

5. The deposition of Franz Lysell, and the following exhibits annexed and referred to therein: Exhibits 1, 2, 3, 5, 6, 7, 13 and 14.

6. The deposition of Elisee Paul Dubois, and the following exhibits annexed and referred to therein: Exhibits 1 to 36 inclusive. Exhibits 58 to 62 inclusive.

7. The deposition of Emile Level and the following exhibits annexed and referred to therein: Exhibits
74 Nos. 3, 5, 6, and 9 to 13 inclusive.

8. The deposition of Jules Castel and the following exhibits annexed and referred to therein: Exhibits Nos. 2 to 7 inclusive. Exhibits Nos. 9 to 12 inclusive.

All of the above depositions having been taken under commission issued herein before John Preston Beecher, United States Consul at Havre.

9. Stipulation of counsel entitled in all the above causes whereby all the exhibits annexed to the foregoing depositions except those included in the above offer, have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

(Signed) DENE GRE & BLAIR,
Solicitors for Credit Havrais.

75 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,277
Texas Transport & Terminal Company, et als.

Note:—

Evidence offered and filed on behalf of the Credit Havrais, and referred to in its Note of Evidence, copied into the

Transcript of Appeal in the case of J. A. E. Pyle, Trustee,
vs. Texas Transport & Terminal Company, et als., No. 14,240
of the Docket of the United States District Court, Eastern
District of Louisiana, in accordance with the Praeceptum for the
Transcripts of Appeal.

76 RESUMED HEARING AND SUBMISSION.

Extract From the Minutes.

November Term, 1911.

New Orleans, Tuesday, November 21st, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs.

No. 14,277

Texas Transport and Terminal Company, et als.

This cause, as continued from Monday, November 20th,
1911, for further hearing, was this day resumed.

Present: The solicitors for the respective parties;
and was argued and submitted, when the Court took time to
consider.

77

DECREE.

Filed January 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle,

vs.

No. 14,277

Credit Havrais, Compagnie Generale Transatlantique, Texas
Transport and Terminal Company, and Scheuch and
Company.

In Equity.

Decree.

This cause came on to be heard at this term and was argued
by counsel and taken under advisement by the Court, and

upon consideration thereof, it is now ordered, adjudged and decreed as follows, viz.:

That complainant's bill be and it is hereby dismissed as to defendant Credit Havrais at cost of complainant, to be taxed; that the injunction pendente lite heretofore issued in this cause be and the same is hereby dissolved, and that Credit Havrais be and the same is hereby declared to be the owner of the cotton referred to in the bill of complaint and covered by the bond herein given; and that the demands of the complainant against the said Credit Havrais be denied.

The Court expressly reserved for further consideration all matters not herein expressly provided for, including the rights and claims of the Compagnie Generale Transatlantique against complainant, and the rights and claims of all parties defendant, under the injunction bonds herein given, as well against the sureties on said bonds as against the complainant, and as to all such matters the bill is retained for further proceedings.

January 1st, 1912.

(Signed) RUFUS E. FOSTER, Judge.

78 PETITION AND ORDER FOR APPEAL.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

versus

No. 14,277

Texas Transport & Terminal Company.

The petition of J. A. E. Pyle, trustee, complainant in the above numbered and entitled cause, with respect represents:

That complainant considers himself aggrieved by the decree made and entered in this cause on the 1st day of January, 1912, and

That he desires and hereby appeals from said decree to the United States Circuit Court of Appeals for the Fifth Circuit,

and presents herewith, and makes part of this petition as Exhibit "A" hereto, assignments of error in said decree.

Wherefore, the premises considered, petitioner prays that his appeal may be allowed to operate as a supersedeas upon the giving of a bond with surety in an amount to be fixed by the Court and conditioned according to law, and that a transcript of the whole record, proceedings, testimony and papers upon which said decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit in the manner and form and at the time prescribed by law and by the practice of said Court; that citation issue to the Credit Havrais, through its solicitors of record, Denegre & Blair; to Compagnie Generale Transatlantique through its agent, W. H. Hendren, to the Texas Transport & Terminal Company through its agent, W. H. Hendren, in the manner and form prescribed by law; for a correction of said errors and a reversal of said decree, and for such other and further relief as may be proper in the premises.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,

Services of above petition accepted.

3/1/12 (Signed) DENEGRE & BLAIR,
Solsrs.

(Signed) GEO. H. TERRIBERRY,
Sol. for Compagnie Generale Transatlantique
and Texas Transport & Terminal Co.

79

ORDER.

Considering the foregoing petition, it is ordered that an appeal be allowed to the said complainant, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, within thirty days from the date thereof, and that same operate as a supersedeas, upon the said complainant furnishing bond with a good and solvent surety, according to law, in the sum of two hundred dollars.

(Signed) RUFUS E. FOSTER, Judge.

Mar. 1/12.

ASSIGNMENTS OF ERROR.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus
Texas Transport & Terminal Company, et als.

No. 14277

Assignments of Error.

Now comes J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, by his attorneys, and says that, in the record and proceedings aforesaid, of the United States District Court for the Eastern District of Louisiana, in the above entitled cause and in the decree therein rendered on the 1st day of January, 1912, manifest error hath intervened to the prejudice of said appellant, in this, to-wit:

(1) The Court erred in rendering and entering a decree dismissing the bill of complaint of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company.

(2) The Court erred in rendering and entering a decree in favor of the defendant.

(3) The Court erred in holding that the Bank of Mulhouse was the owner of the cotton described in the bill of complaint and covered by the bond herein given.

(4) The Court erred in holding that, by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate, and did appropriate, said cotton to the fraudulent bills of lading theretofore acquired and held by the defendant, the Bank of Mulhouse.

(5) The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company.

(6) The Court erred in failing to find and hold that the

defendant knew, or ought to have known, or had reasonable grounds to believe, that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped, referred to in the bill of complaint.

81 (7) The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors and thereby intended to grant, and did grant, an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intentment of the Bankrupt Statute of the United States.

Wherefore, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, prays that for the errors aforesaid and other errors appearing in the record in the above entitled cause to the prejudice of appellant, the said decree be reversed and annulled and that appellant be granted such relief as may be proper, and appellant shall ever so pray.

(Signed) W. A. PERCY.
DUFOUR & DUFOUR.

82

BOND.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14,277
Texas Transport and Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, as principal, and Southwestern Surety Insurance Company, of Oklahoma, as sureties, are held and firmly bound unto the

Texas Transport & Terminal Company, Compagnie Generale Transatlantique, the Credit Havrais, and each of them, in the full and just sum of two hundred dollars to be paid to the said Texas Transfer & Terminal Company, Compagnie Generale Transatlantique, the Credit Havrais [Havrais], certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 1st day of March, in the year of our Lord, one thousand nine hundred and twelve.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between J. A. E. Pyle, trustee, and the Texas Transport & Terminal Company, et als., number 14,277 of the docket of said Court, a decree was rendered against the said J. A. E. Pyle, trustee, and the said J. A. E. Pyle, trustee, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, the Credit Havrais [Havrais], citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said J. A. E. Pyle, trustee, shall prosecute said appeal to effect, and answer all damages and costs if he fail
 §3 to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. A. E. PYLE, Trustee.

By WM. C. DUFOUR.

His Solicitor and Attorney. [Seal]

(Signed) SOUTHWESTERN SURETY INS.
 CO. OF OKLA.

By J. H. BODENHEIMER,

Agent & Atty in Fact. [Seal]

Approved by:

(Signed) RUFUS E. FOSTER, Judge.

United States of America.

District Court of the United States, Eastern District of
Louisiana.

Clerk's Office :

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify, that the foregoing 83 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors, and proceedings in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,277 of the docket of the said Court, (made in accordance with the Praecipe for the Transcript of Appeal, copied at page 1333 of the Transcript of Appeal in the case entitled as above and numbered 14,240 of the docket of the said Court.)

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 10th day of July, A. D. 1912.

[Seal]

(Signed)

H. J. CARTER, Clerk.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 20th, 1913.

No. 2393.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE
TRANSATLANTIQUE, and CREDIT HAVRAIS.

On this day this cause was called, and, after argument by William C. Dufour, Esq., for Appellant, and J. P. Blair, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed April 8th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL Co. et al., and BANK DE MULHOUSE

No. 2390.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL Co. et al., and COMPTOIR
D'ESCOMPTE DE MULHOUSE.

No. 2391.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL Co. et al., and PAUL CHARDIN.

No. 2392.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL Co. et al., and SOCIÉTÉ GENERALE.

No. 2393.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL Co. et al., and CREDIT HAVRAIS.
Appeals from the District Court of the United States, Eastern
District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Sheppard, District Judge.

By the Court:

The appeals in the above numbered and entitled cases are affirmed on the authority of *Lovell v. Newman & Son*, 192 F. 753, and *Hentz & Co. v. Lovell*, Id. 762.

Judgment.

Extract from the Minutes of April 8, 1913.

No. 2393.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE
TRANSATLANTIQUE, and CREDIT HAVRAIS.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the Appellant, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, and the surety on the appeal bond herein, Southwestern Surety Insurance Company of Oklahoma, be condemned, in solido, to pay the costs of this cause in this court, for which execution may be issued out of said District Court.

Petition for Rehearing.

Filed May 5th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2393.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

Application for Rehearing.

The petition of J. A. E. Pyle, trustee, appellant in the above entitled cause, represents:

That there is error to petitioner's prejudice in the decree rendered by this Honorable Court in this cause affirming the decree from

which petitioner's appeal was prosecuted and for specification of error, petitioner says:

That the decree is based upon the authority of the cases of Lovell, Trustee, v. Isidore Newman, and Hentz v. Lovell, reported in 193 F., p. 753.

It is respectfully submitted that the issue involved in the present suit is separate and distinct from the issues involved and presented in the case under authority of which the Court has affirmed this decree, in that the cases cited invoked solely the issue of appropriation of property, while in the instant case, the Court had before it a direct charge of giving and receiving an unfair preference within the intendment of the Bankruptcy Statute, which issue was neither presented nor decided in the Lovell or Hentz cases; that, therefore, the authority cited cannot be held to control the present case.

Wherefore, petitioner prays that a rehearing may be granted in this cause, and that upon such hearing, the judgment appealed from be reversed and that judgment be rendered in favor of petitioner, granting the relief prayed for.

(Signed)

(Signed)

WM. C. DUFOUR,

H. GENERES DUFOUR,

Solicitors for Appellant.

The undersigned hereby certifies that he is one of the solicitors for J. A. E. Pyle, trustee, appellant in the above entitled and numbered cause, and that in his opinion the foregoing petition for rehearing is well founded in law.

(Signed)

WM. C. DUFOUR.

Order Denying Rehearing.

Extract from the Minutes of June 2nd, 1913.

No. 2393.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE
TRANSATLANTIQUE, and CREDIT HAVRAIS.

Ordered that the petition for rehearing, filed in this cause, be, and the same is hereby denied.

Petition for Appeal, and Order.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2393.

J. A. E. PYLE, Trustee,

versus

THE TEXAS TRANSPORT & TERMINAL COMPANY et als.

The petition of J. A. E. Pyle, Trustee of Steele, Miller & Company, Bankrupts, with respect shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a decree has herein been rendered on the 8th day of April, 1913, affirming the judgment of the District Court of the United States for the eastern district of Louisiana; and that the matter in controversy in said suit exceeds Three Thousand Dollars, (\$3000), besides interest and costs, and that the jurisdiction of none of the said Courts, is or was invoked, nor is or was dependent upon the opposite parties to the suit or controversy being aliens or citizens of the United States or citizens of different states; and that this cause does not arise under the patent laws nor the copyright laws, nor the revenue laws, nor the criminal laws, of the United States and that it is not an admiralty case and that it is a proper cause to be reviewed by the Supreme Court of the United States upon appeal.

Therefore, your petitioner respectfully prays that an appeal with supersedeas be allowed in the above cause, and that the Clerk of the United States Court of Appeals for the Fifth Circuit be directed to send the record and proceedings in said cause, with all things concerning same, to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herein filed by said appellant may be reviewed and if error be found corrected according to the laws and customs of the United States.

(Signed)

(Signed)

WM. C. DUFOUR,

H. GENERES DUFOUR,

*Solicitors.**Order.*

The foregoing petition is granted and the appeal allowed as prayed for upon appellant giving bond according to law in the sum of \$250.00.

July 2d, 1913.

(Signed)

DON A. PARDEE, *Judge.*

Assignment of Errors.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2393.

J. A. E. PYLE, Trustee,

VERSUS

TEXAS TRANSPORT & TERMINAL COMPANY et als.

And now comes J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, Bankrupts, appellant, through William J. Lamb, William C. Dufour and H. Generes Dufour, his solicitors, and says that in the record and proceedings aforesaid in the United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause and in the rendition of the final decree therein manifest error has intervened to the prejudice of said appellant in this, to-wit:

(1) The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the decree of the United States District Court for the Eastern District of Louisiana.

(2) The said United States Circuit Court of Appeals for the Fifth Circuit erred in not reversing the said decree of the United States District Court for the Eastern District of Louisiana.

(3) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 4 upon the record of said case, as follows:

"That the Court erred in holding by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate and did appropriate said cotton to the fraudulent bills of lading acquired and held by defendant."

(4) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 5 upon the record of said case as follows:

"The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company."

(5) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 6 upon the record of said case, as follows:

"The Court erred in failing to find and hold that the defendant knew or ought to have known or had reasonable grounds to believe that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped referred to in the bill of complaint."

(6) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 7, upon the record of said case as follows:

"The Court erred in failing to find and hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors,

and thereby intended to grant and did grant an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States."

Wherefore, said J. A. E. Pyle, Trustee, as aforesaid, prays that for the errors aforesaid and other errors appearing in the record of said United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause to the prejudice of the appellant, said decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed and annulled and that said cause be remanded to the United States District Court for the Eastern District of Louisiana, with instructions to set aside the decree heretofore rendered in the trial of this cause and commanding a new trial for same and such other proceedings in said cause as may be determined upon by this Honorable Court to the end that justice may be obtained in the premises.

(Signed)
(Signed)

WM. C. DUFOUR,
H. GENERES DUFOUR,
Solicitor.

Bond on Appeal.

Filed July 7th, 1913.

J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, vs. The Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Credit Havrais.

Know all men by these presents, that we, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, as Principal and Southwestern Surety Insurance Company as Surety are held and firmly bound unto The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais in the sum of Two Hundred and Fifty Dollars, (\$250.00), to be paid to the said, The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais; we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3rd day of July, A. D. 1913.

Whereas the Appellant in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 8th day of April, 1913.

Now, therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) J. A. E. PYLE, *Trustee,*
By W. C. DUFOUR, *Solicitor.*

(Signed) SOUTHWESTERN SURETY INSURANCE
CO. OF OKLAHOMA, [SEAL.]

By J. H. BODENHEIMER,
Agent & Attorney-in-Fact.

71

The foregoing bond is approved this 4th day of July, A. D. 1913.
(Signed).

DON A. PARDEE,
United States Circuit Judge, Fifth Circuit.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 66 to 82 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2393, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant, and The Texas Transport & Terminal Company, Compagnie General Transatlantique, and Credit Havrais are Appellants, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 65 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of July, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant and The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais are Appellees, to show cause, if any there be, why the decree rendered against the said J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company and in said petition and order of Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 4th day of July in the year of our Lord one thousand nine hundred and thirteen.

New Orleans, July 9, 1913.

DON A. PARDEE,
United States Circuit Judge.

Service accepted,

DENEGRE & BLAIR,
Sol'rs for Credit Havrais.

GEO. H. TERRIBERRY,
*Sol. for Tex. Tr. & Term. Co. &
Compagnie Générale Transatlantique.*

[Endorsed:] No. 2393. United States Circuit Court of Appeals, Fifth Circuit. J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Co., Appellant, vs. Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Credit Havrais, Appellees. Citation. U. S. Circuit Court of Appeals. Filed Jul- 10, 1913. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 23,811. U. S. Circuit Court Appeals, 5th Circuit. Term No. 230. J. A. E. Pyle, Trustee in bankruptcy of Steele, Miller & Company, Appellant, vs. The Texas Transport & Terminal Company, Compagnie Generale Transatlantique and Credit Havrais. Filed August 1st, 1913. File No. 23,811.

Office Supreme Court, U.

FILED

MAR 15 1915

JAMES D. MAHER

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 230.

J. A. E. PYLE, Trustee in Bankruptcy
of STEELE, MILLER & COMPANY, Appel-
lant,

vs.

THE TEXAS TRANSPORT & TERMINAL COM-
PANY, COMPAGNIE GENERALE TRANSAT-
LANTIQUE, and CREDIT HAVRAIS.

Memorandum Brief for Appellees.

The above-entitled appeal and appeals numbers 226, 227, 228 and 229 were tried, argued and decided together, both in the District Court and in the Court of Appeals. They present the same general questions of law and of fact. The evidence is the same in each case; that is to say, the evidence taken in one case was by stipulation deemed to be taken in all the other cases, and has been included in only one of the transcripts of record, that of Cause No. 226. The cases illustrate and explain each other, so that they may be more conveniently discussed and more readily understood when presented and considered together. We have, therefore, covered all the cases in one brief and argument, filed in No. 226. To that brief we now beg leave to refer the Court, and for the reasons therein stated, we ask that the judgment appealed from be affirmed.

Respectfully submitted,

GEORGE DENÈGRE,
JOSEPH PAXTON BLAIR,
VICTOR LEOVY,

Of Counsel for Appellees.

FILED

APR 3 1915

JAMES D. MAHER

CLERK

Supreme Court of the United States

October Term, 1914.

No. 230.

**J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF
STEELE, MILLER & COMPANY, Appellant,**

versus

**THE TEXAS TRANSPORT & TERMINAL COM-
PANY, COMPAGNIE GENERALE TRANSAT-
LANTIQUE, AND CREDIT HAVRAIS.**

MEMORANDUM BRIEF FOR APPELLANTS.

As stated in the memorandum filed by the appellee, the above entitled appeal and appeals numbers 226, 227, 228 and 229 were tried, argued and decided together both in the District Court and in the Circuit Court of Appeals. We also have covered all of the cases in one brief, filed in Number 226.

We ask for the same relief as has been asked for in that case and for the reasons stated in that brief.

Respectfully submitted,

W. J. LAMB,

WM. C. DUFOUR,

H. GENERES DUFOUR,

GEORGE JANVIER,

Of Counsel for Appellants. 2.